Supreme Court, U.S.
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No. 92-5

IN THE

Supreme Court of the United States

October Term, 1992

RICHARD J. MACKENSWORTH,

Petitioner, Pro Se,

vs.

SEA-LAND SERVICE INC.,

Respondent,

SOLICITOR GENERAL WAIVED RIGHT OF U.S.A. TO RESPOND.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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Seamans Personal Injury Claim
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QUESTIONS PRESENTED FOR REVIEW (ADDITIONAL)

1. Whether Respondents (Sea-Lands) possession of the so called remnants is legal, in the face of the Confession of Judgment and *adequate considerations* there for, paid to the proper parties/entities?

2. If the Court finds, Respondent, (Sea-Land) and only Sea-Land, has Illegal possession of the *res*, will this Honorable Court recall same?

3. *AM I*, the "only and sole" remaining legal claimant?

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REPLY TO BRIEF IN OPPOSITION

The Importance of this Case is not in Dispute

In "his" Brief in Opposition to the Petition, respondent only makes essentially vague arguments, on important and controlling questions, as to why the decision(s) of the Ninth Circuit is/are correct.

"He" fails to address many of petitioner's arguments with respect to the importance of the issues, "THAT NOW, AS THEN," probably constitute "Procedural Defect" at the District Court level and as they are detrimental to the interests of bona fide claimant intervenors.

Confessions of Judgment

(CR 19, LODGING 1, 2, 3, 4)
(Res. 4, Para. 5)

TO WIT:

NEITHER THE DISTRICT COURT ORDER

(CR 165, Pet. App. II)

Nor the

U.S. COURT OF APPEALS for the NINTH CIRCUIT'S "Order Dismissing" my Appeal (90/16412 Pet. App. VIII),

SAY IN SO MANY WORDS THAT my Motion to Enjoin (CR-133-137) *was based on* the/a *Confession of Judgment.*

THE CONFESSION OF JUDGMENT, while clouded by the efforts of the Originator to revert the Statutory Priority (46 U.S.C. 953a *et seq.*) to one in which/that is to say "they" (Shipowner Trustee) tout their *First Preferred Ship Mortgage* and "their" First Preferred Lien, into a seemingly *Highest Priority Lien,* NEGLECTING TO MENTION, that the "Preferred Maritime Lien" PRIMES ALL OTHER LIENS.

This constitutes a scenario more to "their" liking in which the "debtors" not the Law will decide which creditors will be paid!

THE CONFESSION OF JUDGMENT "leaves no doubt" that it is completely the work of "the legal owners," and it/who explicitly and irretrievably "WAIVES THE RIGHT" to claim restitution in the following words:

CINB as Shipowner Trustee specifically waives any and all right it may have to claim restitution of the Vessel and to defend this action on the Vessel's behalf. (Confession of Judgment, appended at Lodging 1, 2, 3, 4). (See *Overmyer v. Frick*, 92 Sup. Ct. Reporter 776, 405 U.S. 174) (Pet. 16)

Joinder

(Res. Pg. 4, Para. 6)

My "Notice of Joinder" filed pursuant to FRCP Rule 18(a), does not lend itself to the District Court to "treat" or otherwise play with, nor is the F.R.C.P. Rule (18a) half-witted! In plain English, (Pet. 8) reads may "JOIN" . . . as many claims, legal, equitable, or maritime, as he has against an opposing party.

For the District Court to "treat" my "NOTICE OF JOINDER" as a "Motion to Amend" flies in the face of Congressional intent, in that the Statute(s) do not favor back door dismissal of JOINDER, even if it is mis-joinder or non-joinder (Pet. 8-9). But, JOINDER is subject to the Court's power to direct an appropriate procedure for trying the claims, but not dismissal.

Notice of Joinder was converted to a Motion to Amend on Respondent's (Sea-Land's) Motion at CR 217.

Is Joinder Time Barred?

(Res. 5, Para. 1, 6 Para. 4)

Respondent's Opposition Brief blames the District Court (JUDGE), for/as the basis, for an Order (CR 230) alleging (Res. 5:1), "THE COURT FOUND THE NEW CLAIM TO BE PRIMA FACIE TIME BARRED UNDER 46 USC 763a, and denied the motion because the amendment would have been futile.

Respondent fails to address my argument that:

This STATUTE OF LIMITATION (SOL), as most other SOL'S, *does/do not inject itself into an ongoing timely filed action*, and Respondent has not shown in any credible way that it does, (as) in this Action.

My argument resides at pages 24 and 25 of the Petition (for Writ) and "Respondent" fails to address "it". (WHY?)

(Submitted on Motion of Non Party SEA-LAND.)

Is The *Res* Gone and Jurisdiction Destroyed? (*Passim*)

Respondent would have us believe that: only "real" parties and entities to the foreclosure action received disbursement(s) by District Court Order. Not so. TRANSPORT MUTUAL SERVICES RECEIVED $18,000; RESPONDENT (SEA-LAND) $5.4 MILLION.

No Challenge to Parties Listed on Page ii

Possession of the *res* by the U.S. Government and/or any parties to the proceeding on page ii of Respondent's Reply in Opposition, is not (NEGATIVE) being challenged by Petitioner!

Eleven Disbursements and One

Respondent (Sea-Land) states in the Reply Brief in Opposition (Res. Pg. A5, note 3) that:

> "The district court ordered disbursements of the *res* to eleven parties (page ii, the U.S.A. and Transport Mutual Services Inc.) over a two-year period."

Crocodile Tears

(*IBID*)

> "This Court (9th Cir.) would be forced to trace, identify, recover, and then redistribute the disbursed funds."

Recall (Ha Ha)

Thus Respondent makes it appear that: recovering the *res* from eleven distributees might pose difficulties.

RES IS GONE. BUT WHO GOT IT?

Respondent (Sea-Land) makes certain by "often repeat" that we know all *res* is gone, and jurisdiction destroyed (*sic*).

What He Doesn't Say

(LODGING 5)

In the District Court Order CR 272, Respondent (Sea-Land) was disbursed over $5.4 millions as remnants in a combined check (sister ship or consort ship deal) dated December 27, 1989 (27th month), "copy of both sides of 'check'" (remnants) at LODGING NO. 5. This is where the money is and comes from.

Whose Is It?

(REMNANTS)

A look at the Confession of Judgment could lead "one" to believe this $5.4 million belongs to me as the "Sole Legal Claimant." (I think so.) At any rate, the *res* is not irretrievably lost as they would have us believe.

Exploding Some Myths In Their Reply in Opposition

(LODGING 6-7-8)

N. J. Action Not *In Rem* (Res. 3)

1. Respondent alleges: Petitioner's Action filed in New Jersey in 1984 (84 Civ. 2294 ST), was filed *in rem*. Cause of Action listed as 46 USC 688 (Jones Act) and Jury Demand, not possible *in rem* and not specified otherwise, etc. (Res. 3, LODGING 6-7-8)

Assignment

2. Ownership rights (if any) were not transmitted to Respondent (Sea-Land) until December 16, 1987. The Confession of Judgment was filed at CR 19 on October 21, 1987, by the LEGAL OWNER.

Transfer of Petitioner

3. Respondent alleges (Res. 6)(.) Petitioner does not OPPOSE the transfer.

(RESPONDENT IS MOVANT OF TRANSFER)

(CR 206-7)

(See LODGING 8a-b-c)

Opposition to Transfer

4. Petitioner opposed transfer, and the undertaking, and the illegal disbursement of $18,000 TO A NON-PARTY.

My opposition to transfer, etc. is to be found at CR 218 and CR 219 and consists of some twelve (12) pages.

Petitioner Claim Filed

5. Respondent *et al.* supplied to the U.S. Court of Appeals (9th Circuit) the misinformation that petitioner intervened in the Admiralty Foreclosure Action on December 17, 1987. This is a mistake, as the certified copy of pertinent page of Docket shows.

(See Res. A3 and Lodging at 9-10)

The Check Remnants—Excess Proceeds

(LODGING 5)

Respondent claims the *res* is gone and jurisdiction destroyed. Maybe so, but RESPONDENT CANNOT DENY that in U.S.

District Court Check No. 1231, dated 12-27-89, they were receivers of more than $5.4 million dollars!

By Virtue of The Confession of Judgment

"I BELIEVE ALL MONEY"- (remnants, excess proceeds of sale, belong to ME as "sole surviving legal claimant in the Action." (See check at Lodging 5.)

Re Remnant:

Memo of Attorneys for Plaintiff United States of America

(Res 5:11-12)(CR 127, Lodging 11-12-13)

At CR 127, captioned "Memo Supporting Motion to Disburse Excess Proceeds of Sale," at page 4:20, this formal legal statement resides:

> Continental Illinois National Bank of Chicago (CINB), Trustee, the *in personam* defendant and former owner of the vessel, filed a "Claim, Answer, and Confession of Judgment" on its own behalf as Owner Trustee and on behalf of the defendant vessel. Therefore, the said *in personam* defendant has no right to claim any remnants of the proceeds of sale of the vessel . . . (.)
>
> . . . Additionally, United States Lines, the vessel's former bare-boat charterer and owner *pro hac vice*, also filed a "Claim, Answer, and Confession of Judgment" on behalf of the defendant vessel. Therefore, this latter entity also has no right to claim remnants of the proceeds of sale.

A Look Astern

If one hesitates now and projects the next line, to go the step beyond, we have respondent (Sea-Land) getting millions of dollars in *remnants* they are/were not entitled to.

And equally importantly, by virtue of "CINB's" specifically waiving any and all right it (Legal Owner, CINB) may have to claim restitution of the vessel and/or to DEFEND THIS ACTION ON THE VESSEL'S BEHALF, *they* (CINB) *waived the rights, therefore they had no right to defend, nor a right to defend that they* "CINB" *could assign to Sea-Land, as Sea-Land claims.*

Claim Jumpers

3. And for the same reason they (Sea-Land) should not have the "remnants" at my expense and injury thereby, NOR SHOULD THEY BE IN THIS COURT MAKING A MOCKERY OF JUSTICE, NOT UNLIKE INTERLOPERS AND CLAIM JUMPERS.

Conclusion

In view of the fact that I believe the "Confession of Judgment" is the preponderance of evidence and indicates respondent (Sea-Land) is not entitled to any remnants!

Therefore in proper sequence I maintain respondent (Sea-Land) is "POSSESSOR MALA FIDE," of the remnants.

I think it is clear that a disgraceful, greedy, miscarriage of justice has occurred; to too many bona fide claimants.

I ask this Honorable Court to right this wrong, and hopefully in the light, that on the facts, I am the "Sole Legal Claimant"!

Respectfully submitted,

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